

(3) The employing agency must take a decision on the participant's appeal not later than 30 days after it receives the appeal. The agency's decision on the appeal must be written in an understandable manner and must include the reasons for the decision as well as any appropriate references to applicable statutes and regulations. If the decision on the employee's appeal is not made within this 30-day time period, or if the appeal is denied in whole or in part, the participant will have exhausted his or her administrative remedy and will be eligible to file suit against the employing agency in the appropriate Federal district court pursuant to 5 U.S.C. 8477. There is no administrative appeal to the Board of an agency final decision.

(b) Where it is determined that lost earnings resulted from an employing agency error, nothing in this part shall be deemed to preclude an employing agency from paying lost earnings in the absence of a claim from the employee.

**§ 1606.15 Time limits on participant claims.**

(a) Participant claims for lost earnings pursuant to § 1606.14 of this part must be filed within one year of the later of:

(1) January 1, 1991, or

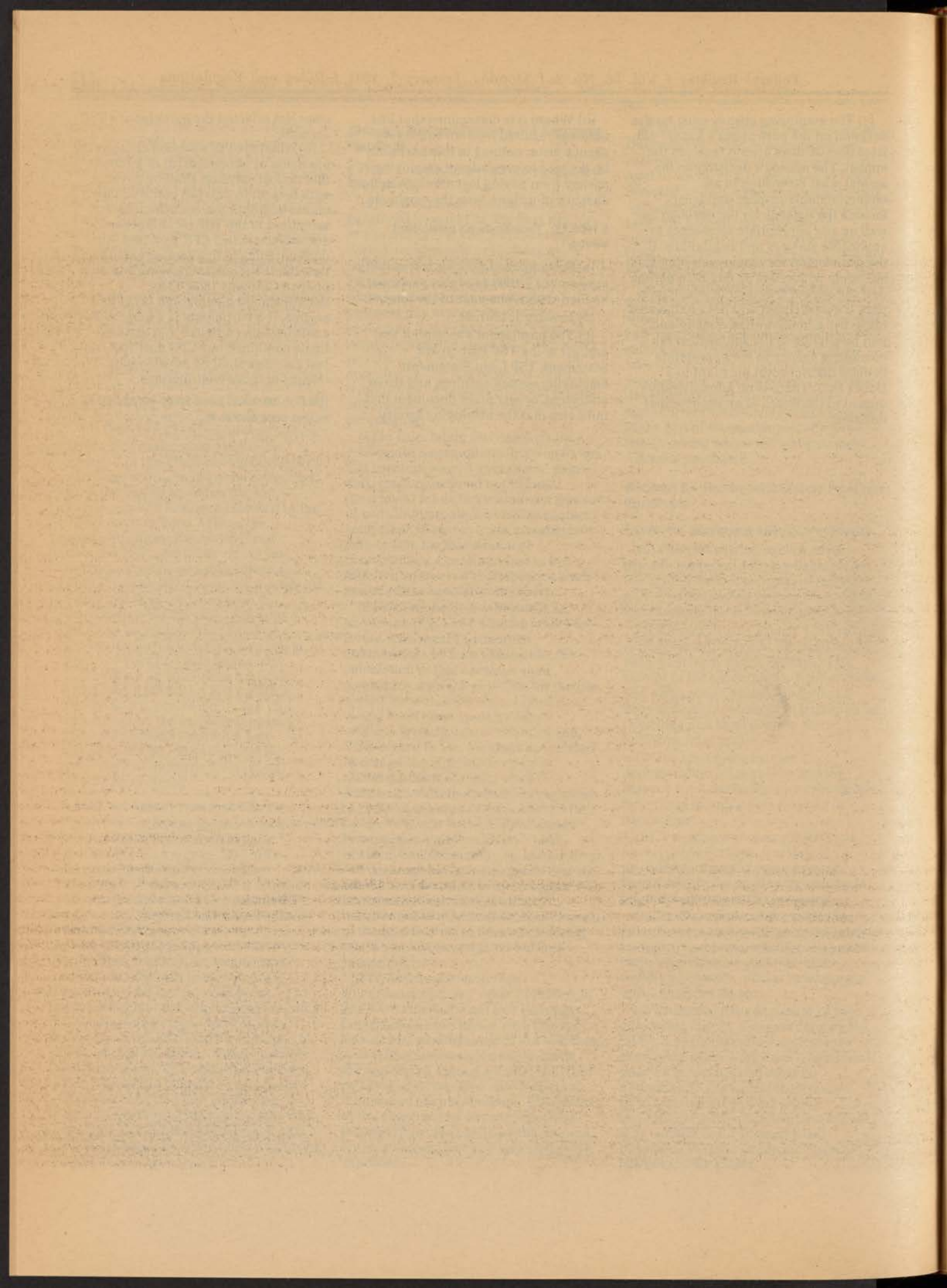
(2) The participant's receipt of the earliest of the TSP Participant Statement, TSP Loan Statement, employing agency earnings and leave statement, or any other document that indicates that the employing agency

error has affected the participant's TSP account;

(b) Nothing in this section changes the provision of paragraph (d) of § 1606.11 that no lost earnings shall be payable with respect to delayed contributions unless and until the contributions are submitted to the TSP recordkeeper in accordance with 5 CFR part 1605, nor does anything in this section extend any time limits for correcting contributions under 5 CFR part 1605. Thus, notwithstanding paragraph (a) of this section, if a participant is unable to have contributions corrected due to time limits contained in 5 CFR part 1605, no lost earnings shall be payable with respect to those contributions.

[FR Doc. 90-30635 Filed 12-31-90; 12:14 pm]

BILLING CODE 5760-01-M





# Registered Federal Thrift

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Monday,  
January 7, 1991

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## Part VI

### Federal Retirement Thrift Investment Board

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5 CFR Part 1650

Automatic Cashout Regulations; Interim  
Rule With Request for Comments



# FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

## 5 CFR Part 1650

### Automatic Cashout Regulations

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing interim regulations in 5 CFR part 1650, subpart C, § 1650.9, concerning automatic cashouts. The Executive Director is also publishing an interim regulation in 5 CFR part 1650, § 1650.23, making a conforming change to the rules concerning spousal rights. In addition, the Executive Director is redesignating subparts C-J, which consisted of §§ 1650.9-1650.52 of part 1650 as subparts D-K, consisting of §§ 1650.10-1650.52. Finally, the Executive Director is changing the internal section references in part 1650 to conform with the redesignated section numbers.

Public Law 101-335 amended 5 U.S.C. 8433(h) to require that a single payment be made automatically to any participant who separates from Government service with a nonforfeitable account balance of \$3,500 or less unless that participant makes a withdrawal election for which the participant is eligible. Public Law 101-335 also amended 5 U.S.C. 8435 to allow participants with nonforfeitable account balances of \$3,500 or less to make a withdrawal election without requiring notification to, or the consent or waiver of, a spouse or former spouse. Section 1650.9 sets forth the procedure for implementing the automatic cashout as prescribed in Public Law 101-335. Section 1650.22 explains that spousal notification and waiver requirements are not applicable to an automatic cashout or any withdrawal election when the participant's nonforfeitable account balance is \$3,500 or less.

**DATES:** These interim rules are effective January 7, 1991. Comments must be received on or before March 8, 1991.

**ADDRESSES:** Comments may be sent to: Michelle C. Malis, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Michelle C. Malis (202) 523-6367.

**SUPPLEMENTARY INFORMATION:** 5 CFR 1650.9 describes the automatic cashout procedures established by the Board for participants in the Thrift Savings Plan.

Paragraph (a) explains that a participant who is separated from Government service and has a nonforfeitable account balance of \$3,500 or less and who does not make a withdrawal election for which he or she is eligible will receive the nonforfeitable account balance of his or her account in a single payment.

Paragraph (b) states that all affected participants will be notified of the proposed automatic cashout and will be given sufficient time to make a withdrawal election.

Paragraph (c) explains that even if a participant's nonforfeitable account balance is \$3,500 or less at the time of notification, if it is greater than \$3,500 at the time the account would otherwise be disbursed, the participant will not receive the automatic cashout and will be required to make a withdrawal election.

Paragraph (d) provides that spousal waiver and notification requirements are not applicable to the automatic cashout or any other withdrawal when the nonforfeitable account balance is \$3,500 or less.

Paragraph (e) establishes January 31, 1991, as the date this section becomes effective for all TSP withdrawals.

5 CFR 1650.23 explains that spousal notification and waiver requirements are not applicable to an automatic cashout or any withdrawal election when the participant's nonforfeitable account balance is \$3,500 or less.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures relating to accounts with nonforfeitable account balances of \$3,500 or less.

### Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

### Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), I find that in view of the requirements of Public Law 101-335 good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations describe the procedures scheduled to be implemented in February 1991 for making automatic cashout payments to separated participants with nonforfeitable account

balances of \$3,500 or less. These regulations also explain changes regarding spousal rights.

### List of Subjects in 5 CFR Part 1650

Employment benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

For the reasons set out in the preamble, part 1650 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

### PART 1650—[AMENDED]

1. The authority citation for part 1650 is revised to read as follows:

**Authority:** 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8436(b), 8467, 8474(b)(5), 8474(c)(1) and Sec. 6, Pub. L. 101-335, 104 Stat. 322.

2. Subparts C-J, consisting of §§ 1650.9-1650.52 of part 1650 are redesignated as shown in the table below to take into account the addition of new §§ 1650.9 and 1650.23:

Old designations	New designations
Subpart C, § 1650.9.....	Subpart D, § 1650.10
Subpart D, § 1650.10.....	Subpart E, § 1650.11
Subpart E, §§ 1650.11-1650.14.	Subpart F, §§ 1650.12-1650.15
Subpart F, §§ 1650.15-1650.21.	Subpart G, §§ 1650.16-1650.22
Subpart G, §§ 1650.22-1650.24.	Subpart H, §§ 1650.24-1650.26
Subpart H, §§ 1650.25-1650.41.	Subpart I, §§ 1650.27-1650.43
Subpart I, §§ 1650.42-1650.45.	Subpart J, §§ 1650.44-1650.47
Subpart J, §§ 1650.50-1650.52.	Subpart K, §§ 1650.50-1650.52

3. As a result of this redesignation, references in part 1650 are changed as follows:

### § 1650.2 [Amended]

3-1. In § 1650.2, the reference in the definition of "Qualifying court order" to "§ 1650.27" is changed to "§ 1650.29".

### § 1650.4 [Amended]

3-2. In § 1650.4, the reference to "subpart F" is changed to "subpart G".

3-3. In § 1650.4, the reference to "§ 1650.9(b)" is changed to "§ 1650.9".

### § 1650.5 [Amended]

3-4. The first sentence of § 1650.5, the reference to "subpart F" is changed to "subpart G".

3-5. In the first sentence of § 1650.5, the reference to "§ 1650.9(b)" is changed to "§ 1650.9".



3-6. In the first sentence of § 1650.5, the reference to "§ 1650.14" is changed to "§ 1650.15".

3-7. In paragraph (a) of § 1650.5, the reference to "subpart E" is changed to "subpart F".

3-8. In paragraph (b) of § 1650.5, the reference to "subpart E" is changed to "subpart F".

#### § 1650.7 [Amended]

3-9. In § 1650.7, the reference to "subpart E" is changed to "subpart F".

3-10. In § 1650.7, the reference to "§ 1650.43" is changed to "§ 1650.45".

#### § 1650.8 [Amended]

3-11. In paragraph (a)(3) of § 1650.8, the reference to "subpart F" is changed to "subpart G".

#### § 1650.10 [Amended]

3-12. In redesignated § 1650.10, the reference to "subpart F" is changed to "subpart G".

#### § 1650.11 [Amended]

3-13. In paragraph (a) of redesignated § 1650.11, the reference to "subpart F" is changed to "subpart G".

#### § 1650.12 [Amended]

3-14. In redesignated § 1650.12, the reference to "subpart F" is changed to "subpart G".

#### § 1650.13 [Amended]

3-15. In paragraph (b)(5) of redesignated § 1650.13, the reference to "§ 1650.13" is changed to "§ 1650.14".

#### § 1650.17 [Amended]

3-16. In paragraph (a) of redesignated § 1650.17, the reference to "§ 1650.19" is changed to "§ 1650.20".

3-17. In paragraph (b) of redesignated § 1650.17, the reference to "§ 1650.19" is changed to "§ 1650.20".

#### § 1650.22 [Amended]

3-18. In paragraph (a) of redesignated § 1650.22, the reference to "§ 1650.20" is changed to "§ 1650.21".

#### § 1650.25 [Amended]

3-19. In paragraph (a) of redesignated § 1650.25, the reference to "§ 1650.22(b)" is changed to "§ 1650.24(b)".

3-20. In paragraph (a) of redesignated § 1650.25, the reference to "§ 1650.22(a) (2) through (6)" is changed to "§ 1650.24(a) (2) through (6)".

3-21. In paragraph (b) of redesignated § 1650.25, the reference to "§ 1650.28" is changed to "§ 1650.30".

3-22. In paragraph (b) of redesignated § 1650.25, the reference to "§ 1650.14" is changed to "§ 1650.15".

#### § 1650.26 [Amended]

3-23. In paragraph (b) of redesignated § 1650.26, the reference to "§ 1650.18" is changed to "§ 1650.19".

3-24. In paragraph (c) of redesignated § 1650.26, the reference to "§ 1650.22(a) (2) through (6)" is changed to "§ 1650.24(a) (2) through (6)".

3-25. In paragraph (d) of redesignated § 1650.26, the reference to "§ 1650.22(a) (2) through (6)" is changed to "§ 1650.24(a) (2) through (6)".

#### § 1650.28 [Amended]

3-26. In paragraph (d) of redesignated § 1650.28, the reference to "§§ 1650.27 through 1650.30" is changed to "§§ 1650.29 through 1650.32".

#### § 1650.30 [Amended]

3-27. In paragraph (a) of redesignated § 1650.30, the reference to "§ 1650.30" is changed to "§ 1650.32".

3-28. In paragraph (b) of redesignated § 1650.30, the reference to "§ 1650.30" is changed to "§ 1650.32".

#### § 1650.31 [Amended]

3-29. In paragraph (d) of redesignated § 1650.31, the reference to "§ 1650.27" is changed to "§ 1650.29".

3-30. In paragraph (e)(5) of redesignated § 1650.31, the reference to "§ 1650.30" is changed to "§ 1650.32".

3-11. In paragraph (f)(2) of redesignated § 1650.31, the reference to "paragraph (a) of § 1650.28" is changed to "paragraph (a) of § 1650.30".

3-32. In paragraph (f)(3) of redesignated § 1650.31, the reference to "paragraph (b) of § 1650.28" is changed to "paragraph (b) of § 1650.30".

#### § 1650.43 [Amended]

3-33. In paragraph (c) of redesignated § 1650.43, the reference to "§ 1650.27(e)" is changed to "§ 1650.31(a)".

#### § 1650.47 [Amended]

3-34. In redesignated § 1650.47, the reference to "§§ 1650.43 and 1650.44" is changed to "§§ 1650.45 and 1650.46".

4. A new subpart C consisting of § 1650.9 is added to read as follows:

### Subpart C—Automatic Cashouts

#### § 1650.9 \$3,500 automatic cashout.

(a) A participant who separates from government service, whether or not entitled to basic retirement benefits, will

receive the nonforfeitable balance of his or her account automatically in a single payment, referred to as an "automatic cashout," if:

(1) His or her nonforfeitable account balance is \$3,500 or less at the time the account is disbursed; and

(2) The participant has not elected one of the withdrawal options for which he or she is eligible as described in §§ 1650.10-1650.15.

(b) If the participant has not completed an election for which he or she is eligible, the participant will be sent a notice of the proposed automatic cashout in sufficient time to choose another withdrawal election.

(c) If a separated participant's nonforfeitable account balance is \$3,500 or less at the time the participant is notified of the proposed automatic cashout, but it exceeds \$3,500 at the time the account would otherwise be disbursed, the automatic cashout will not be made and the participant will be required to make a withdrawal election.

(d) The spousal waiver and notification requirements described in subpart G of this part are not applicable to the automatic cashout or to any other withdrawal election when the participant's nonforfeitable account balance is \$3,500 or less.

(e) *Applicability.* This subpart shall apply to all withdrawal payments of \$3,500 or less made after January 31, 1991.

#### § 1650.10 [Amended]

5. Newly redesignated § 1650.10, paragraph (b) is removed, and the designation (a) is also removed.

6. New § 1650.23 is added to redesignated subpart G to read as follows:

#### § 1650.23 Withdrawal elections not requiring spousal notification or waiver.

(a) The spousal notification and waiver requirements described in §§ 1650.18, 1650.19, 1650.20, 1650.21 are not applicable to an automatic cashout described in § 1650.9 or to any withdrawal election when the participant's nonforfeitable account balance is \$3,500 or less.

(b) *Applicability.* This section shall apply to all withdrawal payments of \$3,500 or less made after January 31, 1991.

[FR Doc. 91-187 Filed 1-2-91; 11:18 am]

BILLING CODE 6760-01-M





# Testis Federal Register

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**Monday**  
**January 7, 1991**

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## **Part VII**

### **Department of Justice**

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**Immigration and Naturalization Service**

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**8 CFR Part 3, et al.**

**Temporary Protected Status; Interim Rule  
with Request for Comments**

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Parts 3, 103, 240, 274a, and 299**

[INS Number: 1400-90]; [DOJ Order Number: 1465-91]

**Temporary Protected Status****AGENCY:** Immigration and Naturalization Service, Department of Justice.**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule implements a new section, 244A of the Immigration and Nationality Act, established by section 302, and implements section 303, of the Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990. This interim rule sets forth the procedures for making application for Temporary Protected Status and provides, in accordance with those provisions, an opportunity for eligible individuals to temporarily remain in, and work in the United States, until it is safe for them to return to their homeland. In addition to the procedures for applying for Temporary Protected Status, this rule also references those forms and fees that are required as a part of the application process. This rule also contains conforming amendments to other parts of Title 8 of the Code of Federal Regulations.

**DATES:** This interim rule is effective January 2, 1991. Written comments on this rule must be received on or before February 6, 1991.

**ADDRESSES:** Please submit comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, Room 5304, 425 I St., NW., Washington, DC 20536. All comment letters should reference the INS and DOJ control numbers of this rule.

**FOR FURTHER INFORMATION CONTACT:** Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for Immigration Review, Suite 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 756-6470; Patricia B. Feeney, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 7048, Washington, DC 20536, telephone number 202-514-2895; or Michael Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Room 7122,

Washington, DC 20536, telephone number 202-514-3240.

**SUPPLEMENTARY INFORMATION:** On November 29, 1990, the President signed the comprehensive Immigration Act of 1990 (IMMACT), which contains provisions that afford temporary protection in the United States to individuals of designated foreign states that are experiencing on-going civil strife, environmental disaster, or other harmful conditions, who also satisfy the eligibility requirements set forth in sections 302 and 303 of IMMACT. Section 303 affords such protection (Temporary Protected Status, TPS) specifically to nationals of El Salvador, who may begin to register on January 2, 1991. The Attorney General is authorized to designate other countries under section 302. This regulation sets forth procedures for establishing eligibility for the benefits conferred under sections 302 and 303 of IMMACT.

The regulation provides definitions of statutory terms and describes eligibility requirements, the applicability of grounds of inadmissibility, and the method of adjudicating and appealing decisions made by district directors. It provides for the confidentiality of information provided by the alien and establishes the terms of employment authorization, travel abroad, maintenance of status and departure after the termination of the designation of a foreign country. It establishes procedures for registration and re-registration for benefits and the requirements for and manner of withdrawal of status. It provides for a *de novo* determination of eligibility in deportation or exclusion proceedings after the denial or withdrawal of an alien's Temporary Protected Status by the Service. It also provides that where an alien has been granted Temporary Protected Status and is subsequently placed in deportation or exclusion proceedings, the alien automatically loses Temporary Protected Status upon the entry of a final order of deportation or exclusion.

Sections 240.1 through 240.19 of this regulation implement procedures for the granting, denial, or the withdrawal of temporary treatment benefits and/or Temporary Protected Status of foreign nationals of any designated foreign state, including El Salvador, except as otherwise provided by §§ 240.40 through 240.47, which provide special procedures for nationals of El Salvador pursuant to section 303 of IMMACT. Conforming amendments to parts 3, 103, 274a and 299 relating to procedures regarding confidential information, employment authorization, fees, and forms,

respectively, are also included in this interim rule.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity for immediate implementation of this interim rule are as follows:

El Salvador has been designated for TPS by section 303 of IMMACT, effective November 29, 1990, the date of enactment. The initial six-month registration period for Salvadorans who wish to apply for such benefits begins on January 2, 1991, the first business day of such period, and ends on June 30, 1991.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget, and clearance numbers are provided in 8 CFR 299.5.

**List of Subjects****8 CFR Part 3**

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

**8 CFR Part 103**

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

**8 CFR Part 240**

Administrative practice and procedure, Immigration.

**CFR Part 274a**

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

**8 CFR Part 299**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 8, chapter I, of the Code



of Federal Regulations, is amended as follows:

1. A new part 240 is added to read as follows:

**PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES**

**Subpart A—General Provisions**

Sec.

- 240.1 Definitions.
- 240.2 Eligibility.
- 240.3 Applicability of grounds of inadmissibility.
- 240.4 Ineligible aliens.
- 240.5 Temporary treatment benefits for eligible aliens.
- 240.6 Application.
- 240.7 Filing the application.
- 240.8 Appearance.
- 240.9 Evidence.
- 240.10 Decision by the district director or Administrative Appeals Unit (AAU).
- 240.11 Renewal of application; appeal to the Board of Immigration Appeals.
- 240.12 Employment authorization.
- 240.13 Termination of temporary treatment benefits.
- 240.14 Withdrawal of Temporary Protected Status.
- 240.15 Travel abroad.
- 240.16 Confidentiality.
- 240.17 Annual registration.
- 240.18 Issuance of charging documents; detention.
- 240.19 Termination of designation.
- 240.20–240.39 [Reserved]

**Subpart B—Temporary Protected Status for Salvadorans**

- 240.40 General.
- 240.41 Definitions.
- 240.42 Eligibility.
- 240.43 Ineligibility.
- 240.44 Semiannual Registration.
- 240.45 Employment authorization.
- 240.46 Travel abroad.
- 240.47 Departure at time of termination of designation.

Authority: 8 U.S.C. 1103, 1254a, 1254a note.

**Subpart A—General Provisions**

**§ 240.1 Definitions.**

As used in this part:

*Act* means the Immigration and Nationality Act, as amended by the Immigration Act of 1990.

*Brief, casual, and innocent absence* means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

*Charging document* means Form I-221 (Order to Show Cause and Notice of Hearing) or Form I-122 (Notice to Applicant for Admission Detained for Hearing before Immigration Judge).

*Continuously physically present* means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

*Continuously resided* means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244A of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either:

(1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or

(2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

*Prima facie* means eligibility established with the filing of a completed application for Temporary Protected Status containing factual information that if un rebutted will establish a claim of eligibility under section 244A(c) of the Act.

*Register* means to properly file, with the district director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244A(b) of the Act.

*Service* means the Immigration and Naturalization Service.

*State* means any foreign country or part thereof as designated by the Attorney General pursuant to section 244A(b) of the Act.

**§ 240.2 Eligibility.**

Except as provided in §§ 240.3 and 240.4, an alien may in the discretion of the district director be granted Temporary Protected Status if the alien establishes that he or she:

(a) Is a national of a state designated under section 244A(b) of the Act;

(b) Has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(c) Has continuously resided in the United States since such date as the Attorney General may designate;

(d) Is admissible as an immigrant except as provided under § 240.3;

(e) Is not ineligible under § 240.4; and

(f) Timely registers for Temporary Protected Status.

**§ 240.3 Applicability of grounds of inadmissibility.**

(a) *Grounds of inadmissibility not to be applied.* Paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Act shall not render an alien ineligible for Temporary Protected Status.

(b) *Waiver of grounds of inadmissibility.* Except as provided in paragraph (c) of this section, the Service may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601 (Application for waiver of grounds of excludability).

(c) *Grounds of inadmissibility that may not be waived.* The Service may not waive the following provisions of section 212(a) of the Act:

(1) Paragraphs (9) and (10) (relating to criminals);

(2) Paragraph (23) (relating to drug offenses), except as it relates to a single offense of simple possession of 30 grams or less of marijuana;

(3) Paragraphs (27) and (29) (relating to national security); or

(4) Paragraph (33) (relating to those who assisted in the Nazi persecution).



**§ 240.4 Ineligible aliens.**

An alien is ineligible for Temporary Protected Status if the alien:

- (a) Has been convicted of any felony or two or more misdemeanors committed in the United States, or
- (b) Is an alien described in section 243(h)(2) of the Act.

**§ 240.5 Temporary treatment benefits for eligible aliens.**

(a) *Prior to the registration period.* Prior to the registration period established by the Attorney General, a national of a state designated by the Attorney General shall be afforded temporary treatment benefits upon the filing, after the effective date of such designation, of a completed application for Temporary Protected Status which establishes the alien's *prima facie* eligibility for benefits under section 244A of the Act. This application may be filed without fee. Temporary treatment benefits shall terminate unless the registration fee is paid within the first thirty days of the registration period designated by the Attorney General. If the registration fee is paid within such thirty day period, temporary treatment benefits shall continue until terminated under § 240.13. The denial of temporary treatment benefits prior to the registration period designated by the Attorney General shall be without prejudice to the filing of an application for Temporary Protected Status during such registration period.

(b) *During the registration period.* Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien's *prima facie* eligibility for Temporary Protected Status. Such temporary treatment benefits shall continue until terminated under § 240.13.

(c) *Denied benefits.* There shall be no appeal from the denial of temporary treatment benefits.

**§ 240.6 Application.**

An application for Temporary Protected Status shall be made in accordance with § 103.2 of this chapter except as provided herein. Each application must be filed with proper fee by each individual seeking Temporary Protected Status. Each application must consist of a completed Form I-104, Form I-765, Form I-821, two completed fingerprint cards (Form FD-258) for every applicant who is fourteen years of age or older; two identification photographs (1½" × 1½"), and, supporting evidence as provided in § 240.9.

**§ 240.7 Filing the application.**

(a) An application for Temporary Protected Status shall be filed with the district director having jurisdiction over the applicant's place of residence.

(b) An application for Temporary Protected Status must be filed during the registration period established by the Attorney General.

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in § 240.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a state is designated under section 244A(b) of the Act, the alien shall be given the opportunity to submit an application for Temporary Protected Status to the district director under § 240.7(a) during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under §§ 240.3(c) or 240.4. Eligibility for Temporary Protected Status in the latter instance shall be decided by the Executive Office for Immigration Review during such proceedings.

**§ 240.8 Appearance.**

The applicant may be required to appear in person before an immigration officer. The applicant may be required to present documentary evidence to establish his or her eligibility. The applicant may have a representative as defined in § 292.1 of this chapter present during any examination. Such representative shall not directly participate in the examination; however, such representative may consult with and provide advice to the applicant. The record of examination shall consist of documents relating to the application, and the decision of the district director.

**§ 240.9 Evidence.**

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

(2) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of the following:

(i) Employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal, State, or local income tax returns; letters from employer(s) or, if the applicant has been self employed, letters from banks, and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested by the Immigration and Naturalization Service. Such letters from employers must include:

(A) Alien's address(es) at the time of employment;

(B) Exact period(s) of employment;

(C) Period(s) of layoff; and

(D) Duties with the company.

(ii) Rent receipts, utility bills (gas, electric, telephone, etc.), receipts, or letters from companies showing the dates during which the applicant received service;

(iii) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing name of school and period(s) of school attendance;

(iv) Hospital or medical records showing medical treatment or hospitalization of the applicant or his or her children, showing the name of the medical facility or physician as well as the date(s) of the treatment or hospitalization;

(v) Attestations by churches, unions, or other organizations of the applicant's residence by letter which:

(A) Identifies applicant by name;

(B) Is signed by an official whose title is also shown;

(C) Shows inclusive dates of membership;

(D) States the address where applicant resided during the membership period;

(E) Includes the seal of the organization impressed on the letter or is on the letterhead of the organization, if the organization has letterhead stationery;



(F) Establishes how the attestor knows the applicant; and

(G) Establishes the origin of the information being attested to.

(vi) Additional documents to support the applicant's claim, which may include:

(A) Money order receipts for money sent in or out of the country;

(B) Passport entries;

(C) Birth certificates of children born in the United States;

(D) Bank books with dated transactions;

(E) Correspondence between the applicant and other persons or organizations;

(F) Social Security card;

(G) Selective Service card;

(H) Automobile license receipts, title, vehicle registration, etc;

(I) Deeds, mortgages, contracts to which applicant has been a party;

(J) Tax receipts;

(K) Insurance policies, receipts, or letters; and/or

(L) Any other relevant document.

(3) *Evidence of eligibility under section 244A(c)(2) of the Act.* An applicant has the burden of showing that he or she is eligible for benefits under this part. Proof of eligibility shall be provided by the applicant in the form requested by the Service.

(b) *Sufficiency of evidence.* The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements.

(c) *Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will constitute an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

#### § 240.10 Decision by the district director or Administrative Appeals Unit (AAU).

(a) *Temporary treatment benefits.* The district director shall grant temporary treatment benefits to the applicant if the applicant establishes *prima facie* eligibility for Temporary Protected Status in accordance with § 240.5.

(b) *Temporary Protected Status.* Upon review of the evidence presented, the district director may approve or deny the application for Temporary Protected Status in the exercise of discretion,

consistent with the standards for eligibility in §§ 240.2, 240.3, and 240.4.

(c) *Denial by district director.* The decision of the district director to deny Temporary Protected Status or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien shall be given written notice of his or her right to appeal, within fifteen (15) days, a decision denying Temporary Protected Status. To exercise such right, the alien shall file notice appeal with the appropriate district director. If an appeal is filed, the administrative record shall be forwarded to the AAU for review and decision, pursuant to authority delegated in § 103.1(f)(2), except as otherwise provided in this section.

(1) If the basis for the denial of the Temporary Protected Status constitutes a ground for deportability or excludability which renders the alien ineligible for Temporary Protected Status under § 240.4 or inadmissible under § 240.3(c), the decision shall include a charging document which sets forth such ground(s).

(2) If such a charging document is issued, the alien shall not have the right to appeal the district director's decision denying Temporary Protected Status as provided in this subsection. The decision shall also apprise the alien of his or her right to a *de novo* determination of his or her eligibility for Temporary Protected Status in deportation or exclusion proceedings pursuant to §§ 240.11 and 240.18.

(d) *Decision by AAU.* The decision of the AAU shall be in writing served in person, or by mail to the alien's most recent address provided to the Service, and, if the appeal is denied, the decision shall state the reason(s) for the denial.

(1) If the appeal is dismissed by the AAU under § 240.18(b), the decision shall also apprise the alien of his or her right to a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings.

(2) The district director may issue a charging document if no charging document is presently filed with the Office of the Immigration Judge.

(3) If a charging document has previously been filed or is pending before the Immigration Court, either party may move to recalendar the case after the decision by the AAU.

(e) *Grant of temporary treatment benefits.* (1) Temporary treatment benefits shall be evidenced by the issuance of an employment authorization document. The alien shall

be furnished, in English, and in the official language of the designated state, with a notice of the registration requirements for Temporary Protected Status, and a notice of the following benefits:

(i) Temporary stay of deportation; and  
(ii) Temporary employment authorization.

(2) Unless terminated under § 240.13, temporary treatment benefits shall remain in effect until a final decision has been made on the application for Temporary Protected Status.

(f) *Grant of Temporary protected status.* (1) The decision to grant Temporary Protected Status shall be evidenced by the issuance of an employment authorization document.

(2) The alien shall be provided with a notice in English and in the official language of the designated state of the following benefits:

(i) The alien shall not be deported while maintaining Temporary Protected Status;

(ii) Employment authorization;

(iii) The privilege to travel abroad with the prior consent of the district director as provided in § 240.15;

(iv) For the purposes of adjustment of status under section 245 of the Act and change of status under section 248 of the Act, the alien is considered as being in, and maintaining, lawful status as a nonimmigrant while the alien maintains Temporary Protected Status.

(3) The benefits contained in the notice are the only benefits the alien is entitled to while in Temporary Protected Status.

(4) Such notice shall also advise the alien of the following:

(i) The alien must remain eligible for Temporary Protected Status;

(ii) The alien must register annually with the district office where the application for Temporary Protected Status was filed; and

(iii) The alien's failure to comply with paragraphs (f)(4) (i) and (ii) of this section will result in the withdrawal of Temporary Protected Status, including work authorization, and may result in the alien's deportation from the United States.

#### § 240.11 Renewal of application; appeal to the Board of Immigration Appeals.

If a charging document is served to the alien with a notice of denial or withdrawal of Temporary Protected Status, an alien may renew the application for Temporary Protected Status in deportation or exclusion proceedings. The decision of the immigration judge as to eligibility for Temporary Protected Status may be



appealed to the Board of Immigration Appeals pursuant to § 3.3 of this chapter. The provisions of this section do not extend the benefits of Temporary Protected Status beyond the termination of a state's designation pursuant to § 240.19.

#### § 240.12 Employment authorization.

(a) Upon approval of an application for Temporary Protected Status, the district director shall grant an employment authorization document valid during the initial period of designation for the foreign state involved (and any extensions of such period) or twelve (12) months, whichever is shorter.

(b) If the alien's Temporary Protected Status is withdrawn under § 240.14, employment authorization expires upon notice of withdrawal or on the date stated on the employment authorization document, whichever occurs later.

(c) If Temporary Protected Status is denied by the district director, employment authorization shall terminate upon notice of denial or at the expiration of the employment authorization document, whichever occurs later.

(d) If the application is renewed or appealed in deportation or exclusion proceedings, or appealed to the Administrative Appeals Unit pursuant to § 240.18(b), employment authorization will be extended during the pendency of the renewal and/or appeal.

#### § 240.13 Termination of temporary treatment benefits.

(a) Temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for Temporary Protected Status.

(b) Temporary treatment benefits terminate, in any case, sixty (60) days after the date that notice is published of the termination of a state's designation under section 244A(b)(3) of the Act.

#### § 240.14 Withdrawal of Temporary Protected Status.

(a) *Authority of district director.* The district director may withdraw the status of an alien granted Temporary Protected Status under section 244A of the Act at any time upon the occurrence of any of the following:

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;

(2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted

Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 240.15;

(3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

(b) *Decision by district director.* (1) Withdrawal of an alien's status under paragraph (a) of this section shall be in writing and served in person or by mail to the alien's most recent address provided to the Service. If the ground for withdrawal is § 240.14(a)(3), the notice shall provide that the alien has fifteen (15) days within which to provide evidence of good cause for failure to register. If the alien fails to respond within fifteen (15) days, Temporary Protected Status shall be withdrawn without further notice.

(2) Withdrawal of the alien's Temporary Protected Status under paragraph (b)(1) of this section may subject the applicant to exclusion or deportation proceedings under section 236 or section 242 of the Act as appropriate.

(3) If the basis for the withdrawal of Temporary Protected Status constitutes a ground of deportability or excludability which renders an alien ineligible for Temporary Protected Status under § 240.4 or inadmissible under § 240.3(c), the decision shall include a charging document which sets forth such ground(s) with notice of the right of a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings. If the basis for withdrawal does not constitute such a ground, the alien shall be given written notice of his or her right to appeal to the AAU. Upon receipt of an appeal, the administrative record will be forwarded to the AAU for review and decision pursuant to the authority delegated under § 103.1(f)(2).

(c) *Decision by AAU.* If a decision to withdraw Temporary Protected Status is entered by the AAU, the AAU shall notify the alien of the decision and the right to a *de novo* determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings, if the alien is then deportable or excludable, as provided by § 240.10(d).

(d) *Issuance of charging document.* (1) The district director shall issue a charging document in the case of any alien, notwithstanding the prior grant of Temporary Protected Status, if the basis

for deportability or excludability constitutes a statutory ground of ineligibility for Temporary Protected Status under § 240.3(c) or § 240.4.

(2) In the case of any such alien who is placed in deportation or exclusion proceedings, Temporary Protected Status is automatically withdrawn upon the entry of a final order of deportation or exclusion. If the alien has been previously granted Temporary Protected Status, the charging document shall constitute notice to the alien that the alien's status in the United States is subject to withdrawal, with the right of a *de novo* determination of eligibility for Temporary Protected Status in such deportation or exclusion proceedings.

#### § 240.15 Travel abroad.

(a) After the grant of Temporary Protected Status, the alien must remain continuously physically present in the United States under the provisions of section 244A(c)(3)(B) of the Act. The grant of Temporary Protected Status shall not constitute permission to travel abroad. Permission to travel may be granted by the district director. Such permission to travel shall be requested pursuant to the Service's advance parole provisions contained in § 212.5(e) of this chapter. There is no appeal from a denial of advance parole.

(b) Failure to obtain advance parole prior to the alien's departure may result in the withdrawal of Temporary Protected Status and/or the institution of deportation or exclusion proceedings against the alien.

#### § 240.16 Confidentiality.

The information contained in the application and supporting documents submitted by an alien shall not be released in any form whatsoever to a third party requester without a court order, or the written consent of the alien. For the purpose of this provision, a third party requester means any requester other than the alien, his or her authorized representative, an officer of the Department of Justice, or any federal or State law enforcement agency. Any information provided under this part may be used for purposes of enforcement of the Act or in any criminal proceeding.

#### § 240.17 Annual registration.

(a) Aliens granted Temporary Protected Status must register annually with the district office where the application was filed. Such registration may be accomplished by mailing completed Forms I-104, I-765, I-821, and two identification photographs (1½" x 1½") within the thirty day period prior



to the anniversary of the grant of Temporary Protected Status and no later than the anniversary of such grant for each year of the alien's Temporary Protected Status.

(b) Unless the Service determines otherwise, registration by mail shall suffice to meet the alien's registration requirements. However, as part of the registration process, the Service may request that an alien appear in person at the nearest district office to register. In such cases, failure to appear without good cause shall be deemed a failure to register under this chapter and an alien may be considered in violation of the registration requirements notwithstanding the fact that an alien may have registered by mail.

(c) Failure to register without good cause will result in the withdrawal of the alien's Temporary Protected Status.

**§ 240.18 Issuance of charging documents; detention.**

(a) A charging document may be issued against an alien granted Temporary Protected Status on grounds of deportability or excludability which would have rendered the alien statutorily ineligible for such status pursuant to § 240.10(c)(1). Aliens shall not be deported for a particular offense for which the Service has expressly granted a waiver. If the alien is deportable on a waivable ground, and no such waiver for the charged offense has been previously granted, then the alien may seek such a waiver in deportation or exclusion proceedings. The charging document shall constitute notice to the alien that his or her status in the United States is subject to withdrawal and a final order of deportation or exclusion shall constitute a withdrawal of such status.

(b) The filing of the charging document with the Office of the Immigration Judge renders inapplicable any other administrative review of eligibility for Temporary Protected Status. The alien shall have the right to a *de novo* determination of his or her eligibility for Temporary Protected Status in the deportation or exclusion proceedings. Review by the Board of Immigration Appeals shall be the exclusive administrative appellate review procedure. If an appeal is already pending before the Administrative Appeals Unit, the district director shall notify the Administrative Appeals Unit of the filing of the charging document, in which case the pending appeal shall be dismissed and the record of proceeding returned to the district where the charging document was filed.

(c) Upon denial of Temporary Protected Status by the Administrative Appeals Unit, the Administrative Appeals Unit shall immediately forward the record of proceeding to the district director having jurisdiction over the alien's place of residence. The district director shall, as soon as practicable, file a charging document with the Office of the Immigration Judge if the alien is then deportable or excludable under section 241(a) or section 212(a) of the Act, respectively.

(d) An alien who is determined by the Service to be deportable or excludable upon grounds which would have rendered the alien ineligible for such status as provided in paragraph (a) of this section and whose Temporary Protected Status has been withdrawn may be detained under the provisions of this chapter pending deportation or exclusion proceedings. Such alien may be removed from the United States upon entry of a final order of deportation or exclusion.

**§ 240.19 Termination of designation.**

Upon the termination of designation of a state, those nationals afforded temporary Protected Status shall, upon the sixtieth (60th) day after the date notice of termination is published in the *Federal Register*, or on the last day of the most recent extension of designation by the Attorney General, automatically and without further notice or right of appeal, lose Temporary Protected Status in the United States. Such termination of a state's designation is not subject to appeal.

**§§ 240.20-240.39 [Reserved]**

**Subpart B—Temporary Protected Status for Salvadorans**

**§ 240.40 General.**

Except as provided in this part, the provisions of part 240 of this chapter shall apply to nationals of El Salvador.

**§ 240.41 Definitions.**

*Continuously physically present* as used in section 303 of the Act, means actual physical presence of a Salvadoran in the United States since September 19, 1990. Any departure, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

**§ 240.42 Eligibility.**

Any alien who is a national of El Salvador, except an alien who is ineligible for Temporary Protected Status pursuant to § 240.43, may be granted Temporary Protected Status in the discretion of the district director if the alien:

(a) Establishes to the satisfaction of the district director, by evidence as provided for under § 240.9, that he or she is a national of El Salvador;

(b) Establishes that he or she has been continuously physically present in the United States since September 19, 1990, as defined in § 240.41;

(c) Establishes that he or she is admissible as an immigrant, except as provided under section 244A(c)(2) of the Act; and

(d) Registers for Temporary Protected Status during the period from January 2, 1991 until June 30, 1991.

**§ 240.43 Ineligibility.**

An alien is ineligible for Temporary Protected Status under this section if the alien:

(a) Has not established to the satisfaction of the district director that he or she is a national of El Salvador;

(b) Has not been continuously physically present in the United States since September 19, 1990, as defined in § 240.41;

(c) Has been convicted of any felony or 2 or more misdemeanors committed in the United States;

(d) Is an alien described in section 243(h)(2) of the Act, or

(e) Is inadmissible based upon a non-waivable ground of inadmissibility pursuant to section 244A(c)(2)(A)(iii) of the Act.

**§ 240.44 Semiannual registration.**

Salvadorans granted Temporary Protected Status shall register in accordance with § 240.17. However, registration under this part shall take place semiannually, within the thirty (30) day period prior to the end of each six month period.

**§ 240.45 Employment authorization.**

Employment authorization shall be granted upon the registration of the eligible alien in increments of six months, as reflected on the employment authorization document, until June 30, 1992. Employment authorization may be renewed by an eligible alien upon re-registration for Temporary Protected Status within the thirty (30) day period prior to the expiration of each six month registration period.

**§ 240.46 Travel abroad.**

Permission to travel abroad may be granted under § 240.15. Salvadorans must also demonstrate to the satisfaction of the district director that emergency and extenuating circumstances beyond the control of the alien require the departure of the alien for a brief, temporary trip abroad.



**§ 240.47 Departure at time of termination of designation.**

(a) At the registration which occurs at the end of the second six month period as provided for under sections 244A(c)(3)(C) and 303(c)(3) of the Act, the Service shall serve on the alien a charging document, consistent with the Act, which establishes a date for deportation proceedings which is after June 30, 1992. The charging document will be cancelled by the Service if El Salvador is subsequently designated under section 244A(b) of the Act.

(b) If an alien provided with a charging document under paragraph (a) of this section fails to appear at such deportation proceedings, the alien may be ordered deported in absentia as provided for under section 242(b) of the Act.

**PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

2. The authority citation for part 3 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301; Sec. 2 Reorg. Plan No. 2 of 1950.

3. Section 3.1 is amended by adding a new paragraph (b)(10) to read as follows:

**§ 3.1 General authorities.**

\* \* \* \* \*

(b) \* \* \*

(10) Decisions of Immigration Judges relating to Temporary Protected Status as provided in Part 240 of this chapter.

**PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS**

4. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E. O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

**§ 103.1 [Amended]**

5. Section 103.1 is amended by removing the word "and" at the end of paragraph (f)(2)(xxxii), and by removing the period at the end of paragraph (f)(2)(xxxiii) and adding, in its place, the word "and".

6. Section 103.1 is further amended by adding a new paragraph (f)(2)(xxxiv) to read as follows:

**§ 103.1 Delegations of authority.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(xxxiv) Application for Temporary Protected Status under part 240 of this title.

**§ 103.2 [Amended]**

7. Section 103.2(b)(3)(i) is amended by revising the reference at the end of the first sentence to read "paragraphs (b)(3)(ii), (iii), and (iv) of this section."

8. Section 103.2 is amended by revising paragraph (b)(3)(ii) to read as follows:

**§ 103.2 Applications, petitions, and other documents.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) *Determination of statutory eligibility.* A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(3)(iv) of this section.

\* \* \* \* \*

9. Section 103.7(b)(1) is amended by adding, in proper numerical sequence, the Form I-104 to the list of forms.

**§ 103.7 Fees.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

Form I-104. For filing Alien Address Report Card as an application for Temporary Protected Status under Section 244A of the Act, as amended by the Immigration Act of 1990, to be remitted in the form of a cashier's check, certified bank check or a money order. A fee of seventy-five dollars (\$75.00) for each application by a national of El Salvador or a fee to be determined at the time of the Attorney General's designation of the foreign state for each application will be required at the time of filing with the Immigration and Naturalization Service.

\* \* \* \* \*

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

10. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

In § 274a.12, the introductory text of paragraph (a) is revised to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

(a) *Aliens authorized employment incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to

one of the indicated classes and, except for paragraph (a)(12) of this section, specific employment authorization need not be requested: \* \* \*

\* \* \* \* \*

12. Section 274a.12 is amended by replacing the "." at the end of paragraph (a)(11) with a ";", and by adding a new paragraph (a)(12), reserving paragraph (c)(18), and adding a new paragraph (c)(19) to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

\* \* \* \* \*

(a) \* \* \*

(12) An alien granted Temporary Protected Status under section 244A of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service.

\* \* \* \* \*

(c) \* \* \*

(18) [Reserved];

(19) An alien applying for Temporary Protected Status pursuant to section 244A of the Act shall apply for employment authorization only in accordance with the procedures set forth in part 240 of this chapter.

\* \* \* \* \*

**PART 299—IMMIGRATION FORMS**

13. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

14. Section 299.1 is amended by adding, in proper numerical sequence, two Service forms, I-104 and I-821, to read as follows:

**§ 299.1 Prescribed Forms.**

\* \* \* \* \*

I-104 (12-3-90)—Alien Address Report Card. \* \* \*

I-821 (12-27-90)—Temporary Protected Status Eligibility Questionnaire.

\* \* \* \* \*

**§ 299.5 [Amended]**

15. Section 299.5 is amended by adding, in proper numerical sequence in the table,

"I-821 . . . Temporary Protected Status Eligibility Questionnaire . . . 1115-0170".

Dated: January 2, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-290 Filed 1-3-91; 1:52 pm]

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